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10 Attorneys for Secured Creditors  
Tom Lange Company, Inc. and  
11 Tom Lange Company International, Inc.

12 **UNITED STATES BANKRUPTCY COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN JOSE DIVISION**

15 In re  
16 SANTA CRUZ BERRY FARMING  
17 COMPANY, LLC,  
18 Debtor.

Case No. 15-51771 - MEH

Chapter 11

**LIMITED OBJECTION TO  
EMERGENCY MOTION FOR  
(I) ORDER APPROVING USE OF  
CASH COLLATERAL, (II) GRANTING  
ADEQUATE PROTECTION FOR USE  
THEREOF, AND (III) SCHEDULING  
FINAL HEARING**

Hearing:

Date: May 29, 2015  
Time: 11:00 a.m.  
Ctm: Room 3070  
280 South First Street  
San Jose, CA 95113-3099

26 Tom Lange Company, Inc. and Tom Lange Company International, Inc. (together,  
27 "TLC") hereby file this limited objection to the emergency motion for use of cash collateral  
28

1 (“Motion”) by Santa Cruz Berry Farming Company, LLC and Corralitos Farms, LLC (together,  
2 “Debtors”) and respectfully represent as follows:

3 **I. INTRODUCTION**

4 Following months of extensive negotiations and revisions to forbearance and related  
5 documents with Debtors’ former counsel, Wendell Rosen Black & Dean LLP, TLC circulated  
6 execution copies of what it expected to get back over the Memorial Day weekend. Instead, what  
7 TLC received on Tuesday morning was a notice from Debtors’ *new counsel*, Thomas Vogeles &  
8 Associates, APC, that Debtors filed voluntary petitions for chapter 11 relief. For the very first  
9 time ever, Debtors allege multi-million dollar claims *against TLC* based on “insider” relationships  
10 and accounting errors from years ago. Far from addressing Debtors’ limited and immediate need  
11 to pay expenses (which TLC does not oppose), Debtors seek to poison the well with aspersions,  
12 hyperbole, and inflammatory rhetoric that all reach far beyond the relief requested in the Motion.

13 While TLC recently committed to funding significant business operations and resolving  
14 all (then known) disputes, Debtors have chosen a much different path: one nuclear on its face,  
15 but vacuous up close. In respecting the Court’s calendar and immediate priorities in these  
16 bankruptcy cases, TLC limits this objection to the very limited relief requested in the Motion.  
17 TLC will address the balance of Debtors’ self-inflicted injuries and emergencies at an appropriate  
18 time later.

19 **II. ARGUMENT**

20 Cash collateral is defined in section 363(a) of the Bankruptcy Code as “cash... or cash  
21 equivalents... whenever acquired in which the estate and an entity other than the estate have an  
22 interest and includes the proceeds... of property subject to a security interest as provided in  
23 section 552(b)...” 11 U.S.C. § 363(a). At this time, TLC does not consent to the Debtor’s use of  
24 Cash Collateral, and indeed, on May 26, 2015, filed its *Notice of Non-Consent to Use of Cash*  
25 *Collateral*. Section 363(e) of the Bankruptcy Code provides that in such circumstance, Debtors  
26 can use Cash Collateral *only if* they provide “adequate protection” of TLC’s interest in Cash  
27 Collateral. 11 U.S.C. § 363(c).

1 Here, Debtors failed to provide *any* evidence showing how secured lenders are adequately  
2 protected. While Debtors speak broadly about “equity cushions” using bold projections in future  
3 crops, Debtors do not justify their assumptions or explain how farming operations will reach the  
4 scale required, especially where real property leases likely expire this year. Moreover, Debtors  
5 provide no support for their contention that California Coastal Rural Development Bank has a  
6 senior lien “on all assets of both Debtors.” Motion, p.6:10-15. Instead, all liens in and to the  
7 Debtors’ assets are specifically identified in documents not presented to the Court.

8 While these and other points will be analyzed in detail at a final hearing on the Motion,  
9 TLC submits a proposed order with provisions it believes are appropriate for Debtors’ interim use  
10 of cash collateral. That proposed order is enclosed as Exhibit A and uploaded to L.O.U. for the  
11 Court’s convenience. TLC’s counsel can discuss that order at tomorrow’s hearing.

12 **III. CONCLUSION**

13 Again, in deference to the Court, TLC looks beyond Debtors’ rhetoric and limits this  
14 objection to the relief requested in the Motion. TLC requests the Court approve the Cash  
15 Collateral order substantially in the form attached hereto as Exhibit A. TLC further requests the  
16 Court grant such other relief as is just and appropriate under the circumstances.

17  
18 DATED: May 28, 2015

BUCHALTER NEMER  
A Professional Corporation

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21 By: /s/ Joseph M. Welch  
WILLIAM S. BRODY  
JOSEPH M. WELCH  
Attorneys for Secured Creditors  
Tom Lange Company, Inc. and  
Tom Lange Company International, Inc.

# EXHIBIT A

# EXHIBIT A

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re

SANTA CRUZ BERRY FARMING  
COMPANY, LLC, a California limited  
liability company,

Debtor.

Case No. 15-51771 MEH

Chapter 11

**EMERGENCY ORDER GRANTING  
EMERGENCY MOTION FOR (i) ORDER  
APPROVING USE OF CASH COLLATERAL  
(II) GRANTING ADEQUATE PROTECTION,  
AND (III) SCHEDULING FINAL HEARING –  
ON AN INTERIM AND LIMITED BASIS  
[TROUGH JUNE \_\_, 2015]**

Date: May 29, 2015

Time: 11:00 a.m.

Place: United States Courthouse  
Courtroom 3070  
280 South First Street  
San Jose, CA 95113-3099

On May 29, 2015, at 11:00 a.m., a hearing (the “Emergency Hearing”) was held on an emergency basis before the Honorable M. Elaine Hammond, United States Bankruptcy Judge presiding, in Courtroom 3070 in the United States Bankruptcy Court, United States Courthouse, 280 South First Street, San Jose, CA 95113-3099 (the “Court”) regarding the Emergency Motion

**EMERGENCY ORDER GRANTING EMERGENCY MOTION FOR (i) ORDER  
APPROVING USE OF CASH COLLATERAL, ETC. [THROUGH JUNE \_\_, 2015]**

1 for (I) Order Approving Use of Cash Collateral (II) Granting Adequate Protection, and (III)  
2 Scheduling Final Hearing (the “Motion”) filed by Santa Cruz Berry Farming Company, LLC, the  
3 debtor and debtor in possession (the “Debtor”) in the above-captioned bankruptcy case (the  
4 “Case”). All appearances are as noted on the record.

5 Having considered Motion, all papers in support of the Motion, the Limited Objection  
6 filed by Tom Lange Company, Inc. and Tom Lange Company International, Inc. (“TLC”), the  
7 presentation and argument of counsel at the Emergency Hearing, and for good cause, the Court  
8 finds and orders as follows:

9 **IT IS HEREBY FOUND** that:

10 A. Bankruptcy.

11 1. On May 26, 2015, Debtor filed a voluntary petition under chapter 11 of  
12 title 11 of the United States Code (the “Bankruptcy Code”) commencing the Case (the “Petition  
13 Date”).

14 B. Use of Cash Collateral.

15 1. Need for Use of Cash Collateral. Debtor asserts that it has an immediate  
16 need to use Cash Collateral in order to continue its business operations and avoid immediate and  
17 irreparable harm.

18 3. Adequate Protection. The rents, issues, profits and proceeds (the “Cash  
19 Collateral”) of the assets of Debtor’s bankruptcy estate (the “Estate”) existing as of the Petition  
20 Date (collectively with the Cash Collateral, the “Prepetition Collateral”) constitutes “cash  
21 collateral” of TLC and certain other secured parties (collectively, the “Secured Parties”) within  
22 the meaning of section 363(a) of the Bankruptcy Code, and pursuant to sections 361 and 363(e),  
23 the Secured Parties are entitled to adequate protection of their respective interests in the  
24 Collateral in connection with Debtor’s use of the Cash Collateral. The provision of adequate  
25 protection as approved by this Order is without prejudice to any Secured Parties’ rights with  
26 respect to whether such adequate protection provided constitutes sufficient “adequate protection”  
27 of such Secured Parties’ interest in the Collateral within the meaning of section 361.

28 Based upon the foregoing findings, the Court makes the following Order.

**EMERGENCY ORDER GRANTING EMERGENCY MOTION FOR (i) ORDER  
APPROVING USE OF CASH COLLATERAL, ETC. [THROUGH JUNE \_\_, 2015]**

1 **IT IS HEREBY ORDERED** that:

2 **SECTION 1. Authorization and Conditions to Use of Cash Collateral.**

3 1.1 Authorization to Use Cash Collateral. Pursuant to the terms and conditions of this  
4 Order, Debtor is authorized to use the Cash Collateral, as follows:

5 1.1.1 Expiration Date. Debtor is authorized to use Cash Collateral on a limited  
6 and emergency basis through and including June \_\_, 2015 (the "Use Period").

7 1.1.2 Budget. Debtor is authorized to use Cash Collateral solely to pay only  
8 those certain expenses actually incurred during the Use Period pursuant to the budget attached  
9 hereto as Exhibit A.

10 1.1.3 Procedure for Use of Cash Collateral. All Cash Collateral, now or  
11 hereafter in possession of Debtor and the Estate shall be deposited by Debtor in a segregated  
12 account (the "Designated Account") and shall be subject to Secured Parties' liens and security  
13 interests to the same extent, validity and priority that such liens and security interests exist as of  
14 the Petition Date.

15 **SECTION 2. Adequate Protection.**

16 2.1 Postpetition Liens.

17 2.1.1 Postpetition Lien Granting. Each Secured Party is granted by Debtor,  
18 effective as of the Petition Date, a "replacement lien" pursuant to sections 361 and 363(e) (a  
19 "Postpetition Lien") in all prepetition and postpetition assets in the Estate, whether tangible or  
20 intangible, whether by contract or operation of law, and including all Cash Collateral thereof  
21 (collectively, the "Postpetition Collateral", and collectively with the Prepetition Collateral, the  
22 "Collateral"), including without limitation, claims or causes of action possessed by Debtor's  
23 bankruptcy estate under sections 544, 545, 547, 548, 553(b), or 723(b), and all proceeds  
24 therefrom, but only to the extent there is a diminution in value of the Prepetition Collateral,  
25 whether from the use of Cash Collateral or otherwise.

26 2.1.2 Postpetition Lien Priority. The Postpetition Lien in favor of each Secured  
27 Party is deemed to have the same extent, validity and priority as the Prepetition Lien in favor of  
28 such Secured Party, subject only to any lien or security interest that is valid, perfected and senior

**EMERGENCY ORDER GRANTING EMERGENCY MOTION FOR (i) ORDER  
APPROVING USE OF CASH COLLATERAL, ETC. [THROUGH JUNE \_\_, 2015]**

1 to the interest of such Secured Party effective as of the Petition Date and not otherwise avoided  
2 and preserved under section 551.

3           2.1.3 Postpetition Lien Perfection. This Order constitutes sufficient and  
4 conclusive evidence of the granting, attachment, priority, perfection, and validity of the  
5 Postpetition Lien, effective as of the date and time of entry of this Order, without any further act  
6 required under federal, state, or local law requiring notice, filing, registration, recording,  
7 possession or other act to validate or perfect a security interest or lien, including without  
8 limitation deposit account control agreements, merchant payment agreements, merchant payment  
9 direction letters, cash transport agreements, and such other agreements with any party possessing  
10 or asserting an interest in the Collateral (a "Perfection Act"). Notwithstanding the foregoing, if  
11 any Secured Party, in its sole discretion, elects to effectuate a Perfection Act, each Secured Party  
12 is authorized to perform such act, and if requested by a Secured Party, Debtor is authorized to  
13 perform such act to the extent necessary or required, and in such event, the subject filing or  
14 recording office or agency is authorized to accept, file, and/or record any document in regard to  
15 such act in accordance with applicable law. No defect or failure in connection with an attempt to  
16 perform a Perfection Act shall limit, waive, or alter the validity, enforceability, attachment, or  
17 perfection of the Postpetition Lien by virtue of entry of this Order.

18           2.2 Section 507(b) Priority. Each Secured Party shall have an allowed super priority  
19 administrative claim of the kind and priority, to the extent applicable, under sections 503(b) and  
20 507(b).

21           2.3 Adequate Protection. Entry of this Order does not affect the rights of any Secured  
22 Parties objecting to the use of the Cash Collateral or contesting the adequate protection provided  
23 pursuant to this Order as sufficient adequate protection of its interests.

24 **SECTION 3. Representations; Covenants; and Waivers.**

25           3.1 Reporting. Debtor shall timely provide each Secured Party with (a) a weekly  
26 report, in form and substance acceptable to the Secured Party receiving such report, detailing the  
27 sales that occurred during the weekly period, the cash receipts from sales received during the  
28 applicable weekly period, the amount of cash in all bank accounts, and a schedule comparing

1 actual collections and expenditures (by expense category) on a cash basis to those expenses set  
2 forth in the Budget for each week ending on Friday (a “Reconciliation Report”) to be delivered  
3 to each Secured Party not later than 5:00 p.m. on the following Monday, (b) all documents and  
4 information submitted by Debtor to the United States Trustee, and (c) upon the reasonable  
5 request of a Secured Party, such other information pertaining to Debtor’s operations, financial  
6 affairs, and the Collateral, including but not limited to bills, invoices, bank statements, cancelled  
7 checks and receipts.

8       3.2    Access to Premises. Upon the reasonable request of a Secured Party and 24 hour  
9 notice, Secured Parties are permitted to access any premises occupied by Debtor for the purpose  
10 of enabling such Secured Party to inspect and audit the Collateral and Debtor’s books and  
11 records, so long as such access and inspection is reasonable and do not substantially interfere  
12 with Debtor’s operations.

13       3.3    Insurance. Debtor shall maintain at all times casualty insurance coverage of the  
14 Collateral in compliance with the United States Trustee Guidelines and in an amount acceptable  
15 to each Secured Party to sufficiently cover each Secured Party’s interests in the Collateral. Such  
16 insurance is to specifically include such Secured Party as a loss payee and additional insured.  
17 Debtor is required to deliver proof of such insurance to each Secured Party within 5 days of the  
18 entry of this Order.

19 **SECTION 4. Debtors Waivers, Consents and Releases.**

20       4.1    Debtor’s Waivers. Debtor waives any rights that it may have to (a) use Cash  
21 Collateral pursuant to section 363 during the Use Period on terms other than those set forth in  
22 this Order, and (b) incur financing or indebtedness out of the ordinary course during the Use  
23 Period that includes the granting of liens, claims or interests in favor of such other party that are  
24 senior or pari passu with the liens, claims and interests in favor of Secured Parties.

25       4.2    Section 506(c) Waiver. No costs or expenses of administration incurred during  
26 the Use Period shall be charged against any Secured Party or the Collateral pursuant to  
27 sections 105, 506(c), 552(b) (with respect to the Court’s ability to order otherwise as provided in  
28 such section), or any similar principle of law, without the prior written consent of such Secured

1 Party, and no such consent shall be implied from any other action, inaction or acquiescence by  
2 such Secured Party.

3 **SECTION 5. Default; Rights and Remedies; Relief from Stay.**

4       5.1    Event of Default. An Event of Default under this Order shall occur upon any of  
5 the following events: (a) a breach or failure to comply with any term, covenant, representation,  
6 warranty or requirement of this Order or any other order of the Court, (b) the granting in favor of  
7 any party other than Secured Parties of a security interest in or lien upon any Collateral or a  
8 claim against the Estate having priority senior or pari passu with the security interests, liens or  
9 claims in favor of the Secured Parties, except to the extent that such party had a security interest  
10 in or lien upon property of the Estate on the Petition Date that was senior in priority senior or  
11 pari passu with the security interests, liens or claims of each Secured Party existing on the  
12 Petition Date, (c) entry of an order converting this Case to a case under chapter 7 of the  
13 Bankruptcy Code, (d) entry of an order appointing or resulting in the appointment of a trustee in  
14 this Case, (e) entry of an order granting relief in favor of any other party (including lessors and  
15 landlords) that includes enabling such party to exercise state law or contractual rights and  
16 remedies with respect to property of the Estate that could have a material adverse effect on  
17 Debtor, its business or the Collateral, or (f) any stay, reversal, vacation or rescission of the terms  
18 of this Order, or any modification of any terms of this Order that is not reasonably acceptable to  
19 the Secured Parties.

20       5.2    Remedies on Occurrence of Event of Default.

21           5.2.1 Notice of Default. Upon the occurrence of an Event of Default, any  
22 Secured Party may provide notice of the default (a “Notice of Default”) via email, facsimile or  
23 overnight mail to (a) Debtor, (b) counsel for Debtor, and (c) in the event an Official Committee  
24 of Unsecured Creditors is formed in the Case (the “Committee”) and retains counsel, to counsel  
25 for the Committee.  
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1                   5.2.2 Consequences Upon Notice of Default.

2                   (a)     No Further Use of Cash Collateral. Upon delivery of a Notice of  
3 Default or the last day of the Use Period, Debtor is prohibited from any further use of Cash  
4 Collateral without further written consent of Secured Parties or an order of the Court.

5                   (b)     Relief from Automatic Stay. Upon Debtor's failure to cure an  
6 Event of Default within 5 days after the delivery of a Notice of Default, each Secured Party is  
7 entitled to file a declaration setting forth the evidence of the default and the service of the Notice  
8 of Default (the "Notice of Default Declaration") and request a hearing to consider a motion for  
9 relief from the automatic stay, a motion for the appointment of a chapter 11 trustee, or a motion  
10 to dismiss the Case, to be scheduled and heard on an expedited basis.

11                  5.2.3 Retention of Rights. Notwithstanding the occurrence of an Event of  
12 Default, each Secured Party retains all of its rights, interests, liens, privileges, claims and  
13 protections granted, authorized or acknowledged by this Order.

14                  5.2.4 Limited Relief from Automatic Stay to Effectuate Order. The automatic  
15 stay provisions of section 362 and any other restriction or injunction imposed by an order of the  
16 Court or by law are modified and vacated without further notice, application, motion, hearing, or  
17 order of the Court to the extent necessary to permit Secured Parties to perform any act authorized  
18 or permitted under this Order.

19 SECTION 6. Other Rights and Matters.

20                  6.1     Power to Waive Rights; Duties to Third Parties. Each Secured Party retains the  
21 right to waive any interest, claim, right, remedy or privilege in its favor (a "Secured Party  
22 Right") and shall have no obligation or duty to any other party with respect to the exercise or  
23 enforcement, or failure to exercise or enforce any Secured Party Right, as applicable. Any  
24 waiver by a Secured Party of a Secured Party Right shall not be or constitute a continuing  
25 waiver. A delay in or failure to exercise or enforce any Secured Party Right shall neither  
26 constitute a waiver of such Secured Party Right, subject Secured Parties to any liability to any  
27 other party, nor cause or enable any other party to rely upon or in any way seek to assert as a  
28

defense to any obligation owed by Debtor, any obligor or any other person or entity to Secured Parties.

6.2 Reservation of Rights. This Order is in addition to and without prejudice to the interests, claims, rights, remedies, and privileges under the Bankruptcy Code, applicable documents or agreements, or law, in favor of Debtor, each Secured Party, or any other party in interest, which each such party fully reserves, including without limitation rights to seek further, different, or additional adequate protection, to seek relief from the automatic stay, to seek an injunction, to not consent to or oppose any request for further use of Cash Collateral or granting of any interest in any of the Collateral or priority in favor of any other party, to object to any sale of assets, to object to the allowance and/or payment of compensation of professionals or other persons or entities seeking compensation or reimbursement from Debtor's bankruptcy estate, and to pursue all non-bankruptcy claims, rights and remedies.

6.3 Further Hearing. A hearing on Debtor’s request for an order authorizing Debtor’s further use of cash collateral on terms other than as provided in this Order shall be held on June \_\_\_\_, 2015, at \_\_\_\_\_ (the “Further Hearing”) before the Court.

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1 **PROOF OF SERVICE**

2  
3 I am employed in the County of Orange, State of California. I am over the age of 18 and  
4 not a party to the within action. My business address is at BUCHALTER NEMER, A  
5 Professional Corporation, 18400 Von Karman Avenue, Suite 800, Irvine CA 92612.

6 On the date set forth below, I served the foregoing document described as:

7 **LIMITED OBJECTION TO EMERGENCY MOTION FOR (I) ORDER APPROVING**  
8 **USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION FOR USE**  
9 **THEREOF, AND (III) SCHEDULING FINAL HEARING**

10 on all other parties and/or their attorney(s) of record to this action by ☐ faxing and/or  
11 ☒ placing a true copy thereof in a sealed envelope as follows:

12 *Debtor*  
13 Corralitos Farms, LLC  
116 Martinelli Street, Suite 7  
Watsonville, CA 95076  
SANTA CRUZ-CA

Thomas A. Vogeles  
Thomas Vogeles and Associates, APC  
3199 Airport Loop Drive, Suite A3  
Costa Mesa, CA 92626

14 *U.S. Trustee*  
15 Office of the U.S. Trustee / SJ  
16 U.S. Federal Bldg.  
280 S 1st St. #268  
San Jose, CA 95113-3004

Thomas J. Polis  
Polis & Associates, APLC  
19800 MacArthur Blvd. #1000  
Irvine, CA 92612

17 ☒ **BY MAIL** I am readily familiar with the business' practice for collection and  
18 processing of correspondence for mailing with the United States Postal Service. The address(es)  
19 shown above is(are) the same as shown on the envelope. The envelope was placed for deposit in  
the United States Postal Service at Buchalter Nemer in Los Angeles, California on May 28, 2015.  
The envelope was sealed and placed for collection and mailing with first-class prepaid postage on  
this date following ordinary business practices.

20 ☒ **SERVED BY PERSONAL DELIVERY** Pursuant to F.R.Civ.P. 5 and/or controlling  
21 LBR, on (date) May 28, 2015, I served the following persons and/or entities by personal delivery,  
22 overnight mail service, or (for those who consented in writing to such service method), by  
facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration  
that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours  
after the document is filed

23 Honorable M. Elaine Hammond  
24 US Bankruptcy Court, Northern (San Jose)  
25 United States Courthouse, Room 3035  
26 280 South First Street  
27 San Jose, CA 95113-3099  
28

1 ☒ I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct to the best of my knowledge. Executed on May 28, 2015, at Irvine,  
3 California.

4 ☒ I declare that I am employed in the office of a member of the bar of this court at whose  
5 direction the service was made. Executed on May 28, 2015, at Irvine, California.

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7 Danielle Cyrankowski /s/ Danielle Cyrankowski  
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